

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.2967 of 2020 (O&M)

Reserved on : 10.11.2020

Pronounced on : 27.11.2020

Harish Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Ms. Anita Sharma, Advocate for the petitioner.

Mr. RKS Brar, Addl. AG, Haryana.

Mr. Sukhdev Singh, Advocate for respondent No.3.

G.S. Sandhawalia, J.

In the present writ petition filed under Articles 226/227 of the Constitution of India, the petitioner challenges the order dated 15.11.2019 (Annexure P-1) passed by Deputy Commissioner, Ambala, whereby the appeal of the applicant had been dismissed. Resultantly, the directions that the petitioner is liable to pay Rs.8,000/- per month to respondent No.3 Narinder Nath son of Jai Ram from the date of the application as per the order dated 07.12.2018 (Annexure P-2) passed by the Sub-Divisional Officer, Ambala, the prescribed authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short '2007 Act'), has been upheld which was ex parte.

Counsel for the petitioner has vehemently submitted that the matter was liable to be remanded back to the Tribunal for fresh decision after giving an opportunity to the petitioner to contest. Reliance was

placed upon Section 2 (g) of the 2007 Act to submit that the petitioner was not a relative being a nephew and, therefore, the jurisdiction of the Tribunal was barred to award the maintenance. It was further submitted that there are other relatives who are earning handsome income and the liability has only been fixed upon the petitioner.

Counsel for the respondent No.3 has vehemently submitted that the petitioner was well aware of the proceedings as he had put in appearance before the Sub-Divisional Officer, Ambala Cantt. and, thereafter chosen absent to himself, while referring to the order dated 12.10.2018 (Annexure P-3), whereby it was noticed that repeated notices have been issued to the petitioner, but he was not coming forth and trying to delay the case.

A perusal of the order of the Tribunal would go on to show that it was the claim of the respondent No.3 that he was a senior citizen aged 64 years and 100% disabled and living in House No.1317, Bengali Mohalla, Hargo Lal road, Ambala Cantt. The owner of the house was the mother, who had died in 1971 and he had become the heir of the house alongwith other heirs. The petitioner's father namely Om Parkash got the house mutated in his name on the basis of a fake Will. The father of respondent No.3 was also a tenant in Shop No.4095, Sarafa Bazar, Ambala Cantt., which was owned by one Jaswant Singh. Om Parkash had also worked together in the said shop alongwith the father of respondent No.3 namely Jai Ram, who had died on 18.01.1980. Thereafter, the respondent No.3, Om Parkash and Baldev Raj, started running business in

the said shop. Baldev Raj had gone to Delhi and died there, respondent No.3 and Om Parkash continued to pay the rent. However, due to an accident the respondent No.3 had become 100% disabled and the present petitioner had started taking care of the shop.

When he had recovered in December, 2017, he was not let in the shop and he had filed the complaint in the office of the Police Superintendent, Ambala. Initially both of them had appeared before the Tribunal at the Ambala Cantt. and the petitioner had refused to give any response to the complainant/respondent No.3. The proceedings were transferred to the Ambala City Tribunal, where the petitioner did not put in appearance and eventually was proceeded ex parte. Thus, the Tribunal had noticed that the occupation of the both shop and house was with the petitioner and respondent No.3 had neither home nor shop or any other source of income to live a normal life and he is childless, handicapped and senior citizen. In such circumstances, Rs.8,000/- was fixed per month as maintenance to be paid by the petitioner, failing which complainant would be entitled to take half share in Shop No.4095, Sarafa Bazar, Ambala Cantt.

The appeal was filed by taking the plea that only when notice dated 29.01.2019 was sent the petitioner he came to know about the order dated 07.12.2018 and the proceedings are, therefore, ex parte and were objected to. It was further submitted that respondent No.3 had shifted to Delhi and after 37 years returned to Ambala in the year 2017 and started quarreling by claiming to be part of the said rented shop. A civil suit had

also been filed for claiming the right to the property, which is still pending.

The appeal was, accordingly, dismissed by coming to the conclusion that the respondent No.3 is childless and helpless and is a senior citizen. The petitioner being the brother's son was working in the father's shop thus the order of the maintenance was held to be justified.

The first issue which arises as to whether the petitioner is entitled for setting aside the ex parte order dated 07.12.2018. A perusal of the order dated 12.10.2018 (Annexure P-3) would go on to show that the Tribunal had noted that the present petitioner had appeared before Sub-Divisional Officer, Ambala Cantt. and, thereafter had not bothered to put in appearance when the proceedings were transferred to the Tribunal at Ambala City and thus, was well aware of the proceedings. The case of the respondent No.3 is also to the same extent in the written statement filed that the action of the petitioner was deliberate. The legal notice was sent thereafter on 25.01.2019 (Annexure P-4) and only then an appeal was came to be filed on 13.02.2019.

No replication has been filed as such to the stand taken by the respondent No.3 that the petitioner was not appearing before the Tribunal at an earlier point of time at Ambala Cantt.; neither it has been mentioned as to how he was not aware of the matter being transferred to the Tribunal at Ambala City or there was any hitch or disability the petitioner suffered and that he was not aware of the proceedings pending at Ambala Cantt. In spite of being aware of the proceedings pending, the

petitioner chose to avoid appearance and thus is prolonging the agony of respondent No.3.

In such circumstances, once there is no sufficient case made out for not appearing before the Tribunal to defend the proceedings as such, the orders passed by the Appellate Authority upholding the order of the Tribunal is justified in the facts and circumstances. The factum of close relationship being a nephew has already been noticed and the fact that both the shop and house are in occupation of the petitioner.

Section 2 (g) of the 2007 Act reads as under:-

2 (g) “relative” means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death”

Once the petitioner is in possession of the property and liable to inherit the property after the death of the senior citizen, the section provides that maintenance can be claimed by a childless senior citizen as per Clause g of Section 2. Therefore, the argument of the counsel of the petitioner that the application was not maintainable in the absence of any relationship, is not made out.

The authorities below have already noticed the facts and circumstances by which the petitioner is earning from the business of the shop in which the father of the respondent No.3 was working. By keeping the respondent No.3 out of the said shop, he is also debarring the said respondent from earning and getting the fruits from the said shop, wherein his father was a tenant. Similarly, both sons of Jai Ram were in occupation of House No.1317 and the mutation had been entered in the

name of Om Parkash father of the present petitioner, which is stated to be on the basis of a fake Will. In such circumstances, the present petitioner would come under the purview of Section 2 (g) of the 2007 Act and liability to maintain the respondent No.3 would fall upon him.

Accordingly, the orders passed by the authorities below cannot be held to be unjustified in any manner, which would warrant interference by this Court under Article 226 of the Constitution of India. Resultantly, there is no merit in the present writ petition and the same stands dismissed.

27.11.2020
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No